

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, SEIU LOCAL 5000, AFL-CIO, CLC

Employer¹

and

UNION WORKERS ASSOCIATION

Petitioner

Case 1-RC-21520

DECISION AND DIRECTION OF ELECTION²

The Union Workers Association (Petitioner) filed the petition in this matter, in which it seeks to represent attorneys, clerical workers, administrative workers, computer workers, and national representatives employed by the National Association of Government Employees (NAGE) at its locations in Massachusetts and Rhode Island.³

¹ The name of the Employer appears as amended at the hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ At the hearing, the Petitioner indicated its willingness to proceed to an election in any unit found appropriate.

NAGE asserts that the only appropriate unit must include employees at its various locations nationwide.⁴

NAGE seeks to exclude several individuals from the unit on various grounds. NAGE seeks to exclude seven individuals in its “top management group” whom it asserts are managerial employees or statutory supervisors. NAGE seeks to exclude six former national vice presidents who may be reinstated to their former positions on the NAGE Executive Board depending on the outcome of a pending lawsuit. NAGE seeks to exclude four local union presidents on the ground of the transitory nature of their employment and a lack of community of interest with other employees in the proposed unit. NAGE asserts that secretaries Lisa McIsaac and Cheryl Neiland must be excluded as confidential employees. The Petitioner disagrees with all of these contentions and maintains that all of these individuals should be included in any unit found appropriate. Finally, NAGE asserts for the first time in its post-hearing brief that nine state directors and office managers should be excluded as statutory supervisors.⁵

I find that the petitioned-for unit encompassing the Massachusetts and Rhode Island locations is appropriate. I find that NAGE has failed to demonstrate that the individuals in its “top management” group are managerial employees or statutory supervisors. I shall not exclude former national vice presidents on the basis of their possible reinstatement to the executive committee. I find that four union local presidents who are paid by NAGE share a sufficient community of interest and expectation of continued employment to warrant their inclusion in the unit. I find that Lisa McIsaac and Cheryl Neiland are not confidential employees and shall include them in the unit. Finally, I shall permit the office managers and state director in the petitioned-for unit to vote under challenge, as the record is insufficient to determine their supervisory status.

Background

NAGE is a union that represents about 42,000 members in 600 bargaining units nationwide. It represents federal workers, state workers, employees of cities and towns, police, corrections officers, EMTs, and paramedics. NAGE’s headquarters is in Quincy, Massachusetts, and NAGE has several field offices throughout the country. In addition to the Quincy location, NAGE has two field offices in Massachusetts, in Worcester and Springfield. The other NAGE field offices are located in Warwick, Rhode Island; Bridgeport and Cromwell, Connecticut; Alexandria and Hampton, Virginia; Atlanta,

⁴ At the hearing, NAGE took the alternative position that statewide units would also be appropriate, but in its post-hearing brief NAGE asserts that state-wide units are not appropriate.

⁵ At the hearing, NAGE also asserted that its staff attorneys should be excluded from the unit on the ground that NAGE needs them to handle labor negotiations in the event that the Petitioner is certified. NAGE did not pursue this contention in its post-hearing brief.

Georgia; Belleville, Illinois; Fort Leonard Wood, Missouri; Fort Polk, Louisiana; and Ventura, California. NAGE also has offices in Florida, Hawaii, Louisiana, and Texas.⁶

At these locations, NAGE employs attorneys, national representatives, clerical workers, and various other employees. There are approximately 57 employees in the unit sought by the Petitioner, including 41 in Quincy, 7 in Worcester, 5 in Springfield, and 4 in Rhode Island.⁷ There are approximately 41 employees located throughout the country in the additional locations.⁸

Bargaining history

In 1995, in Case 34-RC-1315, the International Union, United Automobile, Aerospace, Agricultural & Implement Workers of America (UAW) sought to represent ten attorneys, national representatives, and secretaries employed in NAGE's Bridgeport and Cromwell, Connecticut locations. NAGE took the position that the smallest appropriate unit must also include approximately 60 employees employed in Quincy, Worcester, and Springfield, Massachusetts and in Warwick, Rhode Island. The Regional Director issued a Decision in which he found the statewide unit in Connecticut to be

⁶ The record does not reveal the cities in which the NAGE offices in Florida, Hawaii, Louisiana, or Texas are located.

⁷ These figures include some individuals whose inclusion in the unit is in dispute.

⁸ These include seven in Ventura, California, five in Alexandria, Virginia, six in Hampton, Virginia, five in Atlanta, Georgia, five in Bridgeport, Connecticut, two in Cromwell, Connecticut, three in Hawaii, two in Belleville, Illinois, two in Fort Leonard Wood, Missouri, and one each in Fort Polk, Louisiana, another location in Louisiana, Florida, and Texas. These figures include some individuals whom NAGE would exclude as managers or statutory supervisors.

appropriate, and the UAW was certified after an election on a statewide basis.⁹

There is currently another petition pending involving NAGE in Region 31 in which another union seeks to represent all NAGE employees in California and Hawaii. I take administrative notice of the fact that that petition has been held in abeyance pending the Decision in this matter.

Appropriateness of the petitioned-for unit encompassing Massachusetts and Rhode Island locations

NAGE is a subsidiary of the Service Employees International Union (SEIU). On August 2, 2001, SEIU president Andrew Stern imposed a trusteeship at NAGE. He removed NAGE president Kenneth Lyons and other members of NAGE's National Executive Committee and appointed Joseph Buckley as trustee. Buckley has now assumed the duties of the former president, which include establishing wages, hours, and working conditions for NAGE employees.

On October 19, 2001, Buckley created some departments and appointed department heads,¹⁰ all of whom work at the Quincy headquarters. David Bernard supervises NAGE's field representatives nationwide, including those representatives based in Quincy. Richard Barry is chief counsel and supervises all attorneys nationwide, including the legal staff in Quincy. In addition, Buckley appointed various nationwide "program directors" who are responsible for developing a plan for organizing and representing members in a particular sector of NAGE's membership. Gerald Flynn is the program director for members of the International Brotherhood of Police Officers

⁹ David Bernard was part of a team that represented NAGE in negotiations with the UAW in the mid-1990s. Bernard testified that after months of negotiations for a collective-bargaining agreement, the parties could not reach agreement. The Connecticut employees went on strike for months. About 1996 or 1997, they returned to work and all resigned within 24 hours. After the mass resignation, NAGE hired a new staff of representatives and secretaries, but a law firm now does the legal work that arises in Connecticut. Bernard testified that since that time there has been no collective bargaining between NAGE and the UAW. There have been no requests to bargain, and the UAW has not filed any grievances or unfair labor practice charges. NAGE deals directly with the Connecticut employees. NAGE argues, therefore, that the relationship between NAGE and the UAW is defunct.

Upon the filing of the petition in this matter, the UAW notified the Region, by letter dated July 9, 2002, that it waived its right to intervene in this proceeding and to be present at the hearing, and that it would accept the decision of the Region, "provided that it has no effect on the UAW unit in Connecticut."

In light of the fact that the UAW has not disclaimed interest in the Connecticut unit and, to the contrary, has expressly reaffirmed its interest, I decline to find that the collective-bargaining relationship is defunct solely on the basis of Bernard's testimony.

¹⁰ When Lyons was president, all NAGE employees reported directly to Lyons.

(IBPO), a division of NAGE. James Rucidlo is the federal government director. James Farley is the state government director. David Bernard is the local government director as well as the director for the International Association of EMTs and Paramedics (IAEP), another division of NAGE.¹¹ John Foley is the director of the International Brotherhood of Correction Officers (IBCO), another division of NAGE.

The larger field offices around the country have office managers or state directors who report to Bernard, and it appears that they may also have a dual reporting relationship to the program directors. For example, there was testimony that Rucidlo supervises all of the “federal people” and that Midwest state director Ray Schultz reports to Rucidlo regarding any federal work. Bernard holds a monthly conference call with the office managers and state directors in the field offices, in which he discusses matters such as organizing, contract negotiations, and personnel matters, and the office managers and state directors send Bernard a monthly report about their activities. Barry supervises all attorneys nationwide and clears all settlements of arbitration cases.

Each office is staffed by attorneys, national representatives,¹² and clerical employees, and there are some administrative employees at headquarters in Quincy.¹³ The employees in the field offices report to their office manager or state director.¹⁴ The office manager for the Worcester office is John Foley, while Paul Birks is the office manager for the Springfield office. The Rhode Island office in Warwick has a state director, Anthony Capezza. Bernard supervises the representatives who work out of the

¹¹ The parties have stipulated, and I find, that Joseph Buckley, David Bernard, Richard Barry, and Gary Edwards are managerial employees who should be excluded from any unit found appropriate. The record reveals only that Edwards works in a “financial” position of some kind. The parties have stipulated, and I find, that Gerald Flynn is a statutory supervisor who should be excluded from any unit found appropriate. The parties have stipulated, and I find, that David Holway, who monitors state and national legislation affecting NAGE, is an independent contractor rather than a NAGE employee, and he shall be excluded from any unit found appropriate.

¹² National representatives are sometimes referred to as business agents.

The parties have stipulated, and I find, that the attorneys and national representatives are professional employees within the meaning of the Act.

¹³ Four employees who work in the print shop in Quincy, Robert Diramio, Devin Kerfien, Paul Petridids, and Mary Sheehan, are in a bargaining unit represented by GCIU Local 600M. The parties have stipulated, and I find, that they shall be excluded from any unit found appropriate. The parties have also stipulated, and I find, that any former employees of Insurance Administrators, Inc., which has been affiliated with NAGE but will shortly be dissolved and merged into another trust fund, shall be excluded from any unit found appropriate.

¹⁴ The employees at Fort Leonard Wood and Fort Polk report to the Midwest director in Belleville, Illinois, Ray Schultz. The record does not reveal the reporting relationship of employees in the other small offices that have no office manager or state director.

Quincy office.¹⁵ The office managers and state directors manage their offices on a day-to-day basis, assigning work, dealing with problems, deciding whether or not to take grievances to arbitration, and handling matters at the NLRB and state labor relations boards.

Administration of labor relations is centralized in Quincy. Buckley has final authority to set wages and benefits. This year Buckley gave two extra holidays to employees nationwide. Employees nationwide are governed by the same personnel manual, and Buckley is currently developing a new one for employees nationwide.

With respect to hiring, the office managers and state directors generally advertise openings, interview job applicants, and recommend a candidate to Buckley, who has the final say. Buckley testified that he reviews the resumes of candidates recommended to him but that the office managers and state directors are basically the ones who select new employees. He does not recall overruling a recommendation to hire by one of the field office managers. Buckley has ultimate authority to discipline and discharge, although he testified that he may delegate authority to discipline short of firing. In one instance the Hawaii office of NAGE called him to say that an employee was not working out and the office wanted to let her go. Buckley said “O.K.,” testifying that Hawaii is so far away that the Hawaii office was handling the matter.

There is a monthly meeting in Quincy for Massachusetts, Rhode Island, and Connecticut representatives. Buckley addresses the entire group, and then the representatives break up into groups by state to meet with Bernard. There is no daily contact between the employees in Quincy and the employees in Worcester, Springfield, or Rhode Island, but the same pattern holds true between the other field offices. The Quincy, Worcester, and Springfield attorneys handle cases generated out of their respective offices. An attorney from Quincy handled one or two cases from the Rhode Island office once in the mid-1990’s, and attorneys from Quincy have handled a federal case in Rhode Island or Connecticut on occasion. Barry has assigned some cases from Worcester to attorneys in Quincy in order to help out the attorney in Worcester. Attorneys from Rhode Island and Connecticut have not performed any work in Massachusetts.

Some of the employers of EMTs and paramedics that NAGE deals with are regional employers. For example, IAEP has a contract with American Medical Response that covers over 30 locations in Maine, New Hampshire, Massachusetts, and Rhode Island. Michael Eosco, the president of IAEP Local 1,¹⁶ who is based in Quincy, services the locations under the regional contract and has used the Rhode Island office for his

¹⁵ Bernard supervises the local government representatives in Quincy, who have jurisdiction over bargaining units of local government employees in eastern Massachusetts. The Worcester office represents local government employees in central Massachusetts and the Springfield office has similar responsibility for western Massachusetts.

¹⁶ As discussed below, Eosco, who is paid by NAGE, will be included in the unit.

meetings.¹⁷ Bernard, as the program director for IAEP, supervises Matt Levy, who works in Quincy and handles IAEP affairs in the eastern part of the country. Mark Pincas in California is the Western representative for IAEP. Pincas reports to Harry Berman, the Western state director in California, who reports, in turn, to Bernard. A third individual, Mr. Weigand, who is currently the president of an IAEP local in New York, is expected to become a NAGE employee and work together with Levy and Pincas on organizing projects nationwide.

NAGE currently represents about 25 locals of employees of the Veterans Administration (VA) throughout the country. George Reaves from the Hampton, Virginia office is in the process of negotiating a national contract for VA members. Each NAGE field office services its own VA locals, but Rucidlo, the federal program director, tries to coordinate the policies of the union locals around the country through monthly telephone calls with the union presidents. Bernard testified that NAGE also has a regional or possibly a nationwide agreement with or for an entity called "AFEES."

It is well settled Board law that a union need not seek to represent only the most appropriate unit or most comprehensive unit, but only an appropriate unit. Transerv Systems,¹⁸ Morand Bros. Beverages Co.¹⁹ In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. Dezcon, Inc.²⁰ In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. Overnite Transportation Co.²¹ The Petitioner's desire as to the unit is a relevant consideration, though not dispositive. Florida Casino Cruises.²²

I find that the petitioned-for unit is an appropriate unit. At the outset, I note that, in light of the common supervision from headquarters, the centralized administration of labor relations, and similar duties and working conditions in the field offices, the nationwide unit proposed by the NAGE might also be an appropriate unit, if the

¹⁷ IAEP members in Rhode Island are serviced by Eosco rather than by representatives in the Rhode Island office.

¹⁸ 311 NLRB 766 (1993).

¹⁹ 91 NLRB 409 (1950).

²⁰ 295 NLRB 109, 111 (1989).

²¹ 322 NLRB 723, 724, citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

²² 322 NLRB 857, 858 (1997), citing Airco, Inc., 273 NLRB 348 (1984).

Petitioner sought to represent employees in that grouping. I add, however, that such a unit would not be truly nationwide, as it would exclude the two Connecticut offices, which are already represented.

Nonetheless, the Board will not compel a union to represent the most comprehensive unit, if it seeks a smaller unit that is also appropriate. Transerve Systems.²³ Here, although the unit sought does not correspond to an administrative grouping within NAGE, the locations sought form a geographically distinct grouping relative to NAGE's other locations which is at least as logical as the nationwide unit proposed by NAGE.²⁴ The Board has long held that a unit composed of two or more out of several locations may be appropriate based on their geographic proximity.

...a unit composed of two or more district offices may also be appropriate if there is a reasonable degree of geographic coherence among the offices. If the offices are not too distant and their territories are either adjacent or in reasonable proximity to one another, then, in the absence of strong countervailing considerations, the conventional and well accepted criteria...would justify such a grouping.

Metropolitan Life Insurance Company.²⁵ See also Central Power & Light Company²⁶ (geographic coherence of a bargaining unit is an important consideration in determining whether a bargaining unit is appropriate and workable for purposes of bargaining).

I take administrative notice of the fact that all of the locations in the petitioned-for unit are about 52 to 55 miles apart from one another,²⁷ except that the distance from Springfield to Quincy and from Springfield to Warwick is about 100 miles.²⁸ In contrast,

²³ *Supra*.

²⁴ NAGE's insistence on a nationwide unit seems somewhat inconsistent. According to the 1995 Decision regarding the two Connecticut locations, at least at that time NAGE designated a New England region composed of the offices in Connecticut, Massachusetts, and Rhode Island as "Region One." Notwithstanding the fact that there was no separate organizational structure for Region One, NAGE took the position in 1995 that the smallest appropriate unit must include the locations in Connecticut, Massachusetts, and Rhode Island. Only now that a petitioning union seeks a regional unit has NAGE insisted that a nationwide unit is the smallest appropriate unit.

²⁵ 156 NLRB 1408, 1415 (1966).

²⁶ 195 NLRB 743, 746 (1972), cited recently in Acme Markets, Inc., 328 NLRB No. 170 (1999).

²⁷ Worcester is about 52 to 55 miles from each of the three other locations, and it is about 53 miles from Quincy to Warwick.

²⁸ While NAGE asserts that the offices in the unit sought are also relatively close to the two offices in Connecticut, I find, as noted above, that the Connecticut locations are already represented.

the closest facilities to Massachusetts and Rhode Island in the nationwide unit sought by NAGE are several hundred miles away in Virginia and Illinois; some offices, notably those in California and Hawaii, are several thousand miles away from Massachusetts and Rhode Island. To require the Petitioner to represent employees it does not seek who are, in some instances, thousands of miles away, is unwarranted.

The employees at all four locations perform the same duties and enjoy the same working conditions. At least one employee in the unit sought, Michael Eosco, is based in Quincy but uses the Rhode Island office for meetings, because he services members in Rhode Island as well as those throughout the rest of New England. The employees from Rhode Island and the three Massachusetts offices have at least some contact with each other at a monthly meeting in Quincy, while there is no evidence of any contact between them and the employees at the other locations that NAGE seeks to include. It is true that, while there is no evidence of transfers between the four locations sought by the Petitioner and only minimal interchange among them, neither is there any evidence of transfers or interchange between the Massachusetts and Rhode Island facilities and NAGE's other offices. Thus, the regional unit sought by the Petitioner is at least as appropriate as a nationwide unit based on the factors of contact and interchange.

Because the regional unit sought by the Petitioner is an appropriate unit, and noting particularly that no union seeks to represent employees in a smaller unit, I shall direct an election among the employees in NAGE's Quincy, Worcester, Springfield, and Warwick locations.

Unit placement issues:

Managerial and/or supervisory status of the "top management group"

NAGE asserts that James Rucidlo, John Foley, James Hartman, Elizabeth Reardon, Edward Gillooly, Richard Anderson, and Suzanne Pooler-Johnson are part of its top management group and should be excluded as managerial and/or supervisory employees.²⁹ The record reveals the following about their duties and authority:

James Rucidlo

Federal government director James Rucidlo, who works in the Quincy office, supervises all of the federal representatives, of which there are 15 to 20 around the country.³⁰ He prioritizes their work, for example, by telling them whether or not to attend

²⁹ In light of my finding that a unit limited to NAGE locations in Massachusetts and Rhode Island is appropriate, I need not reach the issue of the managerial or supervisory status of Pooler-Johnson, who works in the Alexandria, Virginia office as a supervisor of the federal field staff.

³⁰ It is unclear from the record whether or not national representatives and attorneys have a dual reporting relationship to a nation-wide program director, such as Rucidlo, and their office manager or state director. There was testimony that Rucidlo supervises George Reaves, who

training events. He may ask Buckley to hire another representative for the federal sector, but Buckley would make the final decision. He recommended that Buckley hire an individual named Mike Sheehan as a consultant to provide training for federal representatives, and Buckley did.

As a program director, Rucidlo is required to develop a plan for the year for the federal membership, including organizing, goals for representation, and training. He organized a meeting for all of the federal locals in order to come up with a plan. He and Holway recommended that NAGE spend \$20,000 to subsidize 120 NAGE members to spend a day lobbying members of Congress regarding federal issues, and Buckley approved their recommendation. Rucidlo has met with directors of federal agencies such as the Veteran's Administration to air grievances by NAGE.

John Foley

John Foley, who works in the Worcester, Massachusetts office, is both the program director of the IBCO and the office manager for the Worcester office.³¹ In his capacity as IBCO program director, Foley is responsible for establishing goals for the representation of prison guards and for training. He supervises one national representative, Christopher Murphy, who represents prison guards and works in the Springfield, Massachusetts office. Foley gives him advice and tells him where the trouble spots are.

James Hartman

James Hartman, who works in the Quincy office, is NAGE's comptroller. He gives input to Buckley regarding the cost of various options. He is responsible for accounts payable and membership dues and deals with CPAs who have come in to work with NAGE with respect to financial issues. He supervises Cheryl Neiland, who does the accounts payable work, as well as Brooke Long, and Jenny Dorney, who enter checks.

Elizabeth Reardon

Elizabeth Reardon, who works in the Quincy office, has been the manager of membership systems for about two months. She supervises two permanent employees and six temporary employees³² who do data entry work with respect to a computerized

manages the employees at the Hampton, Virginia office, and that Midwest director Ray Schultz reports to Rucidlo regarding federal work.

³¹ Foley's supervisory status in his capacity as office manager for the Worcester office will be discussed below.

³² The parties have stipulated, and I find, that these six employees, who are employees of a "temp" agency rather than NAGE, shall be excluded from any unit found appropriate.

system that tracks membership dues. She makes sure that these employees are getting their work done and taking appropriate breaks.

Edward Gillooly

Edward Gillooly is the head of NAGE's publications/public relations department, which is located in Quincy. He advises Buckley as to how stories will play in the press. The publications group puts out four newspapers and operates a website. Two writers, Andrew Zercie and William Traynor, and a graphic artist, Mary Sheehan, report to Gillooly. He assigns them to cover stories and determines what articles will be published. Gillooly also writes some stories himself.

Richard Anderson

Richard Anderson, who works in Quincy, is NAGE's director of education and training. He is responsible for arranging training for staff and union stewards. No employees report to him. He is a very knowledgeable NAGE employee of twenty years who advises staff regarding representation of the membership. Buckley testified that he could not have a managers group without Anderson because of the depth of his knowledge and experience. He also represents NAGE before a joint labor-management committee for state employees and represents a NAGE local.

Buckley holds biweekly "management" meetings that are attended by the five program directors: Flynn, Foley, Rucidlo, Farley, and Bernard.³³ The meetings are also attended by department managers Barry, Holway,³⁴ Gillooly, Hartman, Reardon, and Anderson. Buckley testified that a small group composed of Barry, Bernard, Farley, Holway, and he formulate policy for NAGE,³⁵ but that the individuals who attend these larger management meetings also give him input into the formulation of NAGE policies. Matters that have been discussed at the meetings include organizing, training for staff, pay raises for employees, and a new personnel manual. Another issue discussed was whether only police officers, as opposed to civilians, should represent the police locals. The group decided to retain those civilian representatives who are doing a good job, but to evolve to a system of all-police representatives. As another example, Buckley first discussed with Barry, Bernard, Farley, and Holway the idea of establishing IBPO as a separate division of NAGE. He then sought the input of the larger management group before making a final decision.

³³ As noted above, the parties have stipulated to exclude Flynn, the IBPO director, as a supervisor and Bernard, the local government director, IAEP director, and supervisor of field representatives, as a managerial employee.

³⁴ As noted above, Barry is the chief counsel and Holway is a consultant with respect to legislation. Barry has been excluded from the unit as a managerial employee and Holway as an independent contractor.

³⁵ Buckley testified that a subset of this group, Buckley, Bernard, and Barry, constitute NAGE's "personnel group."

It is well established that employees will be excluded from the unit as managerial employees only if they formulate and effectuate management policies by expressing and making operative decisions of their employer or have discretion in the performance of their jobs independent of the employer's established policy. NLRB v. Bell Aerospace Co.,³⁶ Reading Eagle Co.,³⁷ Ohio River Co.³⁸ The party seeking to exclude particular individuals as managerial has the burden of presenting evidence necessary to establish such exclusion. Montefiore Hospital & Medical Center.³⁹

NAGE has not met its burden of demonstrating the managerial status of the six program directors and department heads. At the outset, I decline to find managerial status simply on the basis of their attendance at the "management" meetings, in the absence of any specific evidence about the input of any of these individuals into any particular policy. Rucidlo's and Foley's role as program directors does not, in and of itself, confer managerial status, where there is no evidence that they have either formulated NAGE policies or exercised substantial discretion independent of NAGE policy. For example, Rucidlo's recommendation to spend \$20,000 to send members to lobby Congress had to be approved by higher management. Case Corp.⁴⁰ (engineers who present recommendations regarding purchases are not managers, where their recommendations must be approved by upper management).

Hartman's role in giving input to Buckley as to the cost of various unspecified options is insufficient to demonstrate managerial status. Case Corp.⁴¹ (industrial engineers who assist company in cost analyses of union proposals and in formulating responses to union proposals are not managerial or confidential employees; they simply provide personnel or statistical information upon which the employer's labor relations policy is based, and there is no evidence that they know the precise terms to which the employer would agree in a collective-bargaining agreement). As for Gillooly, Reardon, and Anderson, NAGE has not presented a shred of evidence that any of them has ever formulated NAGE policies or exercised substantial discretion independent of NAGE policy.

As for the supervisory authority of the "top management group"/department heads in Quincy, Buckley testified generally that he has given them real authority within their

³⁶ 416 U.S. 267 (1974).

³⁷ 306 NLRB 871 (1992).

³⁸ 303 NLRB 696, 714 (1991).

³⁹ 261 NLRB 569, 572 fn. 17 (1982).

⁴⁰ 304 NLRB 939, 949 (1991).

⁴¹ Id. at 943.

departments. When Lyons was president, for example, Lyons himself approved all employees' days off. Buckley has now given the department supervisors the authority to approve days off. With respect to discipline, the record reveals only that Buckley would have to approve terminations, but that he may delegate discipline short of firing to his managers and supervisors. Buckley gives final approval of any hiring done in Quincy. Buckley has final authority to set wages, but he testified that, prior to implementing a pay increase in January, he consulted his department managers and division heads, and they all agreed on an amount.

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.⁴² The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. New Fern Restorium Co.⁴³ The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care.⁴⁴ The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.⁴⁵

NAGE has failed to demonstrate that any of the six individuals at issue is a statutory supervisor. No employees report to Anderson. As for the others, Buckley's testimony that they have authority to approve days off, that Buckley "may" delegate to them authority to discipline short of firing, and that he consulted them prior to implementing a pay increase is too vague to support a finding of supervisory status. Rucidlo's role in recommending the hire of a consultant cannot support a supervisory finding as to him, because the consultant is not an employee of NAGE, nor is there any evidence regarding the degree to which Buckley independently investigated the individual's qualifications. The fact that the parties have stipulated to exclude program director Gerald Flynn as a statutory supervisor does not, as NAGE contends, demonstrate the supervisory status of program directors Rucidlo and Foley, in the absence of any record evidence as to Flynn's actual supervisory authority and its similarity to that of Rucidlo and Foley.

⁴² 273 NLRB 1677, 1689 (1985).

⁴³ 175 NLRB 871 (1969).

⁴⁴ 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

⁴⁵ 308 NLRB 101, 102 (1992).

NAGE offered only conclusory testimony about the role that these individuals play in assigning work or directing employees, with no evidence as to the degree of independent judgment that these individuals exercise in giving such assignments or directions. Thus, testimony that Gillooly assigns writers to cover stories, that Reardon makes sure the data entry workers are getting their work done, that Foley gives advice to a national representative, that Rucidlo prioritizes the work of federal representatives, and that Hartman “supervises” three individuals is insufficient, without more, to establish supervisory status, because “conclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority.” Sears, Roebuck & Co.⁴⁶

Supervisory status of the state directors and office managers

NAGE asserts for the first time in its post-hearing brief that the state directors and office managers in its field offices are statutory supervisors by virtue of their authority to assign work, responsibly direct employees, and effectively recommend hiring and terminations. In light of my finding that a unit limited to NAGE’s offices in Massachusetts and Rhode Island is appropriate, I need consider only the supervisory status of John Foley, the office manager in Worcester, Massachusetts; Paul Birk, the office manager in Springfield, Massachusetts; and Anthony Capezza, state director in the Warwick, Rhode Island office.⁴⁷

In Worcester, five representatives, one attorney, and one clerical employee report to Foley. In Springfield, two representatives, one attorney, and one clerical employee report to Birk. In Warwick, one representative, one attorney, and one clerical employee report to Capezza. Office managers and state directors manage their offices on a day-to-day basis. They assign work to representatives and make changes in the representation of locals if needed. They decide whether grievances should go to arbitration and whether to file charges at the NLRB or state labor relations agencies. They assign cases to the attorneys, although they discuss any litigation other than grievance arbitration with Richard Barry, the chief counsel in Quincy. In assigning work, office managers and state directors consider the representative’s or attorney’s knowledge of the represented group and their case load.

With respect to their authority to hire, the office managers and state directors request Buckley for permission to fill a vacancy. In the case of representatives or clerical

⁴⁶ 304 NLRB 193 (1991).

⁴⁷ David Bernard and Richard Barry, admitted managers, supervise the representatives and attorneys who are based in the Quincy office. The other individuals whom NAGE asserts are statutory supervisors are Joseph Pastorella, state director for Connecticut; Charles Warren, state director in the Atlanta, Georgia office; Richard Zamora, state director for Hawaii; Harry Berman, West Coast director in the Ventura, California office; Ray Schultz, Midwest director in the Belleville, Illinois office; and George Reaves, office manager in Hampton, Virginia. (An office manager recently left the Alexandria, Virginia office, so there is no manager there currently.)

employees, they advertise the position, interview candidates, and make a recommendation to Buckley. Buckley testified that he reviews the resumes of the recommended candidates and gives final approval, but that the office managers and state directors are basically the ones who select applicants. Buckley does not recall overruling any supervisor's recommendation to hire. While Buckley testified about employees hired in Hawaii and California, there is no evidence that Foley, Birk, or Capezza have actually hired any employees since the imposition of the trusteeship. The practice with respect to hiring attorneys may depend on the distance from Quincy. In California, the West Coast director interviewed an attorney and forwarded his recommendation to Buckley, who approved it. In the case of attorneys for more local offices, Chief Counsel Rick Barry advertised and interviewed for an attorney position in Springfield and will do so for an attorney position in Worcester as well. Buckley has final approval, but he testified that he doubts he would overrule Barry.

With respect to authority to discipline, Buckley testified that he retains ultimate authority to discipline, but that he may delegate authority to discipline short of firing to his managers and supervisors. Buckley makes final decisions with respect to termination. No examples were given in which Foley, Birk, or Capezza administered discipline.⁴⁸

I find that the record regarding the authority of the office managers and state directors is insufficient to make a determination as to their supervisory status. In light of the insufficiency of the record and the fact the supervisory status of the office managers and state directors was not litigated at the hearing, I will permit Foley, Birk, and Capezza to vote under challenge.

Inclusion of former National Executive Committee members

As a result of the trusteeship imposed on August 2, 2001, SEIU removed from office NAGE's former president, Kenneth Lyons. Two other elected officers, and six National Executive Committee members were also removed from office as a result of the trusteeship. The two former officers were National Executive Secretary David Bernard and Treasurer James Farley, whom the parties have stipulated to exclude. The six Executive Committee members removed from office were National Vice Presidents Richard Gallo, John Foley, Thomas Turco, Joseph Delorey, Suzanne Pooler-Johnson, and Charles Warren.⁴⁹ The current plan is to end the trusteeship after the upcoming NAGE national convention, which is set for September 18 through September 20, 2002.

⁴⁸ Buckley testified that someone in the Hawaii office called to report that an employee was not working out and he wanted to let her go. Buckley testified that he said "o.k.," and that Hawaii is so far away that the Hawaii office was handling the matter.

⁴⁹ Lyons was suspended on August 2, 2001, pending a trusteeship hearing, for alleged financial improprieties and lack of democratic procedures. SEIU held a trusteeship hearing in September 2001, after which Hearing Officer Marc Earls issued a report recommending that the trusteeship be upheld. According to Earls' report, the trusteeship was precipitated by internal charges filed by Farley and David Holway against Lyons, and the remaining eight members of the National

As noted above, Foley is currently in charge of the Worcester office and is also the IBCO program director. Turco currently works in the Worcester office as a representative in the police division. Delorey is a staff attorney in the Quincy office. Pooler-Johnson is supervisor of the federal field staff in Alexandria, Virginia. Warren is NAGE's state director in Atlanta as well as the southern state director of the IBPO. Gallo was subsequently terminated from his employment with NAGE.⁵⁰

In November 2001, Lyons filed a lawsuit in federal court challenging the propriety of the trusteeship and seeking its dissolution.⁵¹ Buckley testified that the matter was tried before Judge Lasker, who indicated that he would try to issue his decision by early September 2002.

NAGE asserts that these individuals do not share a community of interest with the unit employees, both because of their high-level positions immediately preceding the imposition of the trusteeship and because of the possibility of their imminent reinstatement.⁵² I disagree. The fact that they were once managerial employees by virtue of their positions on the National Executive Committee should not exclude them from the unit, since the fact remains that they are no longer members of the Executive Committee.⁵³ I find that the possibility that Foley, Turco, and Delorey will be reinstated to their positions on the National Executive Committee in the near future is too speculative to disenfranchise them in the upcoming election.⁵⁴ They are not currently

Executive Committee voted unanimously to seek and support the trusteeship. The Board of the SEIU International thereafter adopted Earls' recommendation.

⁵⁰ In its post-hearing brief, the Petitioner concedes that Gallo should be excluded from the unit, because he is not currently a NAGE employee. In light of my determination to approve a unit limited to NAGE's Massachusetts and Rhode Island facilities, I need not reach the issue of Pooler-Johnson's or Warren's possible reinstatement to the Executive Committee.

⁵¹ Gallo, who was later terminated from his employment with NAGE, has filed a separate lawsuit challenging both his termination and the imposition of the trusteeship.

⁵² The Petitioner agrees with NAGE that National Executive Committee members should not be included in the unit but argues that these individuals are no longer Executive Committee members and may not be in the future.

⁵³ Canonie Transportation Co., 289 NLRB 299 (1998), which was cited by NAGE, is inapposite. That case concerned the test to be used in considering the eligibility of part-time supervisors who perform both supervisory and nonsupervisory duties. Even assuming Canonie has any bearing on cases involving managerial status, there was no suggestion in Canonie that the supervisory status of the individual who was excluded as a supervisor in that case had ended as of the time of the election.

⁵⁴ I note that they are not parties to either of the lawsuits that have been filed and, as National Vice Presidents, voted to seek and support the trusteeship that the lawsuits seek to dissolve.

national vice presidents and should not be excluded from the unit on that basis.⁵⁵ Curtis Industries,⁵⁶ cited by NAGE, is inapposite. Curtis Industries is one of a line of cases in which the Board has permitted individuals who claim they were illegally discharged or who claim they are illegally replaced economic strikers to vote under challenge, pending federal court litigation or arbitration proceedings which may resolve their employment status.⁵⁷ Unlike employees who have been discharged or replaced, Foley, Turco, and Delorey will be statutory employees at the time of the election. Even if their employee status changes in the future, that does not alter the fact that they were employees at the time they voted. They shall be included in the unit.

Community of interest and temporary status of presidents of union locals

Nine presidents of union locals work at the NAGE facility in Quincy. Eight of them are presidents of locals that represent state employees in Massachusetts, and one, Michael Eosco, is president of Local 1 of the IAEP. These presidents are all elected to office by their membership. The parties have stipulated to the exclusion of five of these elected presidents: Anne Christianson, Gregory Sorazon, James Farley, Richard Waring, and Christopher Ryan. Under the terms of various collective-bargaining agreements between NAGE and the Commonwealth of Massachusetts, these five have each been granted a leave of absence from their positions with the state for the duration of their elected office. They are paid by the Commonwealth for 35 hours per week, and NAGE provides a small supplement to their salaries.

NAGE seeks to exclude the other four elected presidents: John Donegan, Barbara Osgood, John Mullen, and Michael Eosco. These individuals are also on a leave of absence from their jobs with the Commonwealth of Massachusetts or, in the case of Eosco, from his job with American Medical Response (AMR), an employer with which NAGE has a collective-bargaining relationship. Their salaries are paid by NAGE, which pays them what they would have earned as employees of the Commonwealth or AMR. They do not report to anyone within the NAGE hierarchy. They are elected for a fixed term of two to three years, depending on the bylaws of their locals. NAGE is not required to hire them at the end of their tenure as local president, nor does NAGE have a policy that would preclude them from being hired after their tenure as president is over. Barbara Osgood, who was originally employed by the Commonwealth of Massachusetts, had been employed by NAGE as a business agent for a number of years before being elected president of her local. John Mullen worked for NAGE as an organizer prior to his election as local president; he is currently in the first year of his second three-year term.

⁵⁵ As discussed below, Foley will be permitted to vote under challenge in his capacity as office manager for the Worcester office.

⁵⁶ 310 NLRB 1212 (1993).

⁵⁷ I note that even if the Curtis Industries line of cases were on all fours with the facts in this case, they would support, at most, permitting the individuals at issue to vote under challenge, not excluding them.

NAGE's representatives in Quincy and eight of the elected local presidents take turns being on call to answer members' questions by telephone as the "representative of the day."⁵⁸

NAGE asserts that the four union presidents do not share a community of interest with the petitioned-for employees, because they are elected and thus not subject to termination, they do not report to a supervisor in the NAGE hierarchy, they dictate their own work and control their own schedules, and their pay is tied to their salaries in their previous jobs. I note that the fact that they are elected rather than appointed, in and of itself, does not preclude them from being in the bargaining unit. Retail Clerks International Association⁵⁹ (elected council organizers are employees; there does not seem to be any reason why the fact of election should determine the status of a worker). In light of the similar nature of their duties in representing union members, including their participation in the "representative of the day" rotation, I find that the union presidents share a sufficient community of interest with the petitioned-for employees, notwithstanding the facts that they control their own work and do not report to a supervisor, and that their pay is set on a different basis.

With respect to the transitory nature of their employment, while it is true that the union presidents are employed by NAGE for a term of finite duration, the Board has held that it will not apply the term "temporary" to employees whose employment, albeit of finite duration, might last as long as three years. Boston Medical Center.⁶⁰ It appears, in any event, that some of the presidents are longstanding NAGE employees who may be expected to continue their employment with NAGE beyond the end of their current elected term of office.

Confidential status of Lisa McIsaac

Lisa McIsaac has been a secretary for the legal staff in Quincy for eight years and is the most experienced secretary at NAGE. She reports to Chief Counsel Rick Barry and does all of his typing.⁶¹ She also filled in for Buckley's previous secretary, Wendy

⁵⁸ James Farley, who is NAGE's state government director as well as a local union president, is the only local union president who does not take a turn as representative of the day.

⁵⁹ 366 F.2d 642, 646 (D.C. Cir. 1966). The Circuit Court distinguished Retail Store Employees Union, Local 444, 153 NLRB No. 16, fn. 7 (1965) and Retail Store Employees Union, Local 880, 153 NLRB No. 17, fn. 9 (1965), in which it seemed that the elected union officials were excluded from a bargaining unit "because of the nature of their jobs rather than the manner in the which the jobs were acquired."

⁶⁰ 330 NLRB 152, 166 (1999).

⁶¹ McIsaac does work for all ten attorneys in the legal department. She testified that she spends about fifty percent of her time maintaining a database of cases and setting up files. She spends about fifty percent of her time typing letters, pleadings, and briefs for the staff attorneys. She also

Henry, while she was on vacation in September 2001 and for some period of time after Henry left in about September or October 2001 until Buckley hired a new secretary, Michelle Stuart.⁶² McIsaac filled in for Stuart when she was on vacation around February or March 2002.

Buckley testified that he and Barry have participated in decisions to terminate employees. McIsaac has typed letters in connection with the terminations of Paul Jennings, Kim Saliba, and Evelyn Wallace. McIsaac also sent and received faxes regarding the termination of a third employee, Sandy Panelli. In another incident, Barry interviewed McIsaac regarding alleged sexual harassment by an employee and then had McIsaac type his memo to the file about the incident, making any corrections necessary to make the memo accurate. McIsaac testified that another secretary, Mary Magnuson,⁶³ who rotated into Buckley's office a couple of times, typed a termination letter to Panelli. McIsaac has copied exhibits for outside counsel for SEIU in preparation for a hearing in connection with the trusteeship. She has also typed paperwork relating to settlement of some unspecified lawsuits against NAGE. Finally, Buckley testified that, if the Petitioner is certified, McIsaac will type NAGE's proposals and possibly take notes during negotiations.

A confidential employee is one who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. NLRB v. Rural Electric Corp.,⁶⁴ B.F. Goodrich Co.⁶⁵ The Board contemplates that a confidential employee is involved in a "close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it." Intermountain Electric Assn.⁶⁶ In addition, the Board has developed the alternative test that employees who have regular access to confidential information concerning the anticipated changes that may result from collective-bargaining negotiations may be confidential employees. Crest Mark Packing Co.⁶⁷ The party

does some typing for the representatives and orders office supplies. She testified that she does work for Barry, but not a lot.

⁶² The parties have stipulated, and I find, that Michelle Stuart is a confidential employee who shall be excluded from any unit found appropriate.

⁶³ Neither party asserts that Magnuson is a confidential employee.

⁶⁴ 454 U.S. 170 (1981).

⁶⁵ 115 NLRB 722, 724 (1956).

⁶⁶ 277 NLRB 1 (1985).

⁶⁷ 283 NLRB 999 (1987).

asserting confidential status has the burden of proving its assertion. Intermountain Electric Assn.⁶⁸

I find that McIsaac assists Barry, who, as a stipulated manager, formulates, determines, and effectuates management policies regarding labor relations. McIsaac's work for Barry, however, does not warrant her exclusion from the unit as a confidential employee.⁶⁹ Typing termination notices or other documents concerning disciplinary matters or personnel problems does not render an employee confidential. Lincoln Park Nursing Home,⁷⁰ Bakersfield Californian.⁷¹ See also, Inland Steel Co.⁷² (access to information relating to personnel problems, such as sexual harassment complaints, does not render secretary a confidential employee, because this is not the type of information concerning anticipated changes that may result from collective-bargaining negotiations). Her role in copying exhibits for counsel for SEIU in connection with the trusteeship hearing does not confer confidential status, as that matter had no bearing on labor relations between management and rank-and-file employees, nor is there any evidence that the unspecified lawsuits against NAGE for which she typed settlement paperwork had any bearing on labor relations matters.

NAGE also asserts that McIsaac must be excluded as a confidential employee because she will type NAGE's collective-bargaining proposals if the Petitioner is certified. With respect to this contention, I note that the trusteeship is currently scheduled to end in September 2002, so it is unclear at best who will represent NAGE at the bargaining table in the future, if the Petitioner is certified. Assuming Buckley and/or Barry represent NAGE at the bargaining table, Buckley has a secretary who has already been excluded from the unit as a confidential employee. Under these circumstances, I find Buckley's assertion that McIsaac will type the proposals to be too speculative to warrant McIsaac's exclusion from the unit as a confidential employee. Columbia Music & Electronics, Inc.⁷³ As for Buckley's testimony that McIsaac may possibly take notes during negotiations, the Board has found that typing an employer's bargaining-session

⁶⁸ Supra.

⁶⁹ Buckley also formulates, determines, and effectuates management policies, but I find that McIsaac's role in filling in for Buckley's confidential secretary during her vacation periods does not confer confidential status either. McIsaac has worked for Buckley only on an occasional basis; in any event, the only basis for NAGE's assertion that she has performed confidential work for him is that she has typed termination notices, which, as discussed herein, does not confer confidential status.

⁷⁰ 318 NLRB 1160, 1164 (1995).

⁷¹ 316 NLRB 1211, 1212 (1995).

⁷² 308 NLRB 868, 879 (1992).

⁷³ 196 NLRB 388 (1972).

notes does not confer confidential status, because the purpose of the notes is merely to record information that the union already knows. Bakersfield Californian.⁷⁴

Confidential status of Cheryl Neiland

Cheryl Neiland works in accounts payable and reports to Comptroller James Hartman, who is responsible for NAGE's finances and accounting. One of Neiland's duties is to input payroll data, such as raises in salaries, which is used by an outside contractor, ADP, to generate the payroll. When there was a pay increase earlier this year, Hartman told Neiland the amount of each employee's increase so that she could relay the changes to ADP. She first testified that she had access to the information before the affected employees did, but then testified that she did not know if the employees learned of their raises before she did. Sometimes NAGE is notified by a court that an employee's wages must be garnished for purposes of income taxes, child support, or loans. In such instances, Hartman calculates the amount to be garnished and Neiland enters the data for the payroll change. Garnishment information is kept confidential.

Neiland is also responsible for handling employee expense reports, called "blue sheets," that are submitted by employees from NAGE offices nationwide on a biweekly basis. Neiland gathers them, checks the addition, and gives the blue sheets to Barry or Bernard for review.⁷⁵ Once they approve the blue sheets, Neiland prepares the checks for the employees. Neiland may flag to Barry or Bernard that an employee's blue sheet includes a cell phone bill that exceeds the \$50 monthly allowance permitted by NAGE policy. Bernard testified that she has also flagged home phone usage. Bernard also testified that Neiland points out if an expense voucher does not conform to NAGE policy regarding reimbursement for meals. Neiland testified that she does not flag meal expenses, because she does not know what is allowable. Neiland testified that Hartman once flagged an employee's excessive expenses for a car rental. Buckley called her into his office and said that he was concerned that she had not brought this to his attention and told her to bring it to his attention when she sees unusual car rental expenses.

At Buckley's direction, Neiland presents all National Car Rental bills and U.S. Air bills to Bernard for his review, so that he can verify that these travel expenses are authorized. Neiland testified that she often does not know the names of the employees whose travel is covered by these bills and has no idea what expenses are legitimate.

Bernard testified that it has been discussed that Neiland would cost out proposals such as salary adjustments if the Petitioner were certified. Neiland testified that she has never done a cost analysis of any kind and that Hartman would do such things.

Neiland is not a confidential employee. First, as discussed above, there is no evidence that Hartman formulates, determines, and effectuates management policies in

⁷⁴ Supra at 1212-1213.

⁷⁵ Barry approves the attorneys' blue sheets, and Bernard approves the representatives' blue sheets.

the field of labor relations. Even if he were someone who formulated labor relations policies for NAGE, Neiland does not act in a confidential capacity to him. As for access to information concerning pay raises and garnishment, the Board has long held that merely having access to confidential personnel information does not establish confidential status. Rhode Island Hospital.⁷⁶ This is so, even if the information is presented to Neiland before the employees involved are notified, where the information is in the process of being forward to the interested parties. Bakersfield Californian.⁷⁷ Her role in pointing out questionable expenses on employee expense reports does not demonstrate confidential status. Finally, assuming the truth of Bernard's assertion that, if the Petitioner were certified, he would assign the responsibility of costing out proposals to a clerical employee,⁷⁸ as discussed above, that does not establish confidential status in the absence of evidence that Neiland would know the precise terms to which NAGE would agree in collective bargaining. Case Corp.⁷⁹

CONCLUSION

In view of the statutory requirement that the Board may not join professional and non-professional employees in a single unit without the desires of the professional employees being determined in a separate vote, I shall, pursuant to the Board's decision in Sonotone Corp.,⁸⁰ direct separate elections in voting groups 1 and 2. The employees in group 1, the professional employees, will be asked the following two questions on their ballots:

1. Do you desire to be included in the same unit as non-professional employees employed by the Employer for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by the Union Workers Association?

If a majority of the professional employees in voting group 1 vote yes to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their vote on the second question will then be counted with the votes of the non-professional employees in voting group 2 to decide the representative for the combined bargaining unit. If, on the other hand, a majority of the professional employees in voting group 1 do not vote for inclusion, they will not be included with the non-professional employees and their votes on the second question will be separately

⁷⁶ 313 NLRB 343, 351 (1993).

⁷⁷ Supra, 316 NLRB at 1212.

⁷⁸ Buckley testified that it is the comptroller's job to give the cost of various options.

⁷⁹ 304 NLRB 939, 943 (1991).

⁸⁰ 90 NLRB 1236 (1950).

counted to decide whether or not they wish to be represented by the Petitioner in a separate professional unit.

The ultimate determination as to the appropriate unit or units is based upon the result of the election. However, I make the following findings with regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in a unit with non-professional employees, I find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time attorneys, national representatives, clerical workers, administrative workers, and computer workers employed by the Employer at its locations in Quincy, Massachusetts, Worcester, Massachusetts, Springfield, Massachusetts, and Warwick, Rhode Island, but excluding all other employees, print shop employees, temporary employees, employees of Insurance Administrators, Inc., managerial employees, confidential employees, guards and supervisors as defined in the Act.

2. If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, I find the following two units to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT 1:

All full-time and regular part-time attorneys and national representatives employed by the Employer at its locations in Quincy, Massachusetts, Worcester, Massachusetts, Springfield, Massachusetts, and Warwick, Rhode Island, but excluding all other employees, print shop employees, temporary employees, employees of Insurance Administrators, Inc., managerial employees, confidential employees, guards and supervisors as defined in the Act.

UNIT 2:

All full-time and regular part-time clerical workers, administrative workers, and computer workers employed by the Employer at its locations in Quincy, Massachusetts, Worcester, Massachusetts, Springfield, Massachusetts, and Warwick, Rhode Island, but excluding all other employees, print shop employees, temporary employees, employees of Insurance Administrators, Inc., managerial employees, confidential employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

Separate elections by secret ballot shall be conducted by the Regional Director among the employees in the voting groups found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting groups who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by the Union Workers Association.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 15, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 22, 2002.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 8th day of August 2002.

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440-3300-3375-7500
460-5033-5001
460-5033-5050-5020
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